

IN THE SUPREME COURT OF THE STATE OF WASHINGTON  
SUPREME COURT NO. 94593-4

COURT OF APPEALS NO. 74617-1

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LAWRENCE HILL, ADAM WISE, and ROBERT MILLER,  
on their own behalves and on behalf of all persons similarly situated,

Plaintiffs/Respondents

v.

GARDA CL NORTHWEST, INC., f/k/a AT SYSTEMS, INC.

Defendant/Petitioner

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GARDA'S REPLY TO ANSWER AND  
CROSS PETITION FOR REVIEW

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CATHARINE MORISSET, WSBA # 29682  
CLARENCE BELNAVIS, WSBA # 36681  
Fisher & Phillips LLP  
1201 Third Avenue, Suite 2750  
Seattle, Washington 98101  
Tel. (206) 682-2308  
Fax (206) 682-7908  
Attorneys for Petitioner Garda CL  
Northwest, Inc.

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## **I. INTRODUCTION TO REPLY**

RAP 13.4 allows a party who petitions for review to reply to an answer only if the answering party seeks review of issues not raised in the petition for review, and the reply is limited to addressing only the new issues raised in the answer. Here, respondents Lawrence Hill et al. (“the Drivers”) seek review of two new issues not raised in Garda CL Northwest, Inc.’s (“Garda”) Petition for Review: (1) the Court of Appeal’s decision to reverse the award of double damages under RCW 49.52.050; .070 and (2) the Court of Appeal’s decision to reverse the award of prejudgment interest attributable to missed rest periods. The Drivers only summarily claim that both issues are of “a substantial public interest” and thus fail to show that this Court should accept review of those issues.

## **II. ARGUMENT IN REPLY**

### **A. The Court of Appeals Applied the Well Known Bona Fide Dispute Standard to Hold that Double Damages Were Inappropriately Awarded on the Meal Period Claims.**

The Drivers miss the point when they argue that because there no dispute were paid for on duty-meal periods, double damages should have been a certainty. Answer at 16. Garda argued below, as it has consistently throughout this litigation, that the Drivers intentionally and knowingly waived off-duty meal periods either in the agreements negotiated by the Drivers Associations or by individually signing the acknowledgments of

the same. CP 404, 424-25, 454, 468, 488-89, 526-27, 549, 568-69, 614, 635, 659, 1140, 1153, 1176.<sup>1</sup> While Garda also argued that there was no wage violation because the Drivers were paid for such on-duty meal breaks, it also argued that if the court below found a meal period violation, it was not “willful.” *Hill v. Garda CL Nw., Inc.*, 198 Wn. App. 326, 362 (2017). In agreeing with Garda, the Court of Appeals relied on the long recognized standard to determine if a failure to pay wages is willful: “A failure to pay owed wages is not willful when there is a bona fide dispute over whether the employer owes the wages.” *Hill*, 198 Wn. App. at 362 (citing *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 160 (1998)). As *Schilling* explains, “bona fide,” “means a “ ‘fairly debatable’ dispute over . . . or whether all or a portion of the wages must be paid.” 136 Wn. 2d at 162 (citing numerous cases). Applying this rule, the Court of Appeals then went on to hold that “the state of the law was unclear” regarding the effect of the CBA meal period waivers, and therefore there was “a bona fide dispute” whether the Drivers were entitled to an off-duty meal period (and owed more wages).<sup>2</sup> This holding was consistent with *Schilling*, the

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<sup>1</sup> See Summary in Appendix.

<sup>2</sup>The Court of Appeals thus declined to consider Garda’s argument that its Garda’s FAAAA defense created a bona fide dispute or whether the Plaintiffs knowingly submitted to Garda’s practice. *Hill*, 198 Wn. App. at 364. Garda’s argument against review of this holding is in no way a

cases cited therein, and its progeny, and indeed, the Drivers fail to cite *any* case to support their claim that this application of this long recognized rule directly “conflicts with this Court’s prior precedent.” Answer at 16.

Rather than bolster their argument, the Drivers actually underscore one of the reasons that Garda asks this Court to accept review when they rely on the CBA language themselves.<sup>3</sup> Namely, their argument that the Court of Appeals should have reviewed and interpreted the CBA language squarely supports what has been one of Garda’s key points: 29 U.S.C. § 185 (§ 301) preempts the Drivers’ missed meal period claims because they are substantially dependent on their interpretation of the CBAs. *See e.g., Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 103-04 (1962).

The Drivers’ argument that no bona fide dispute exists is simply a wish that the Court of Appeals ignored their CBAs and their individual acknowledgments of them. That shows only that the Drivers hoped for a different result; it does not show a “matter of substantial public interest.”

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waiver of such arguments, and will raise them if this Court grants review on the meal period double damages issue.

<sup>3</sup> The Drivers’ conclusory summary of the CBA language at Page 18 of their Answer is not entirely accurate and misleading. See Summary in Appendix.

B. The Court of Appeals Hold Regarding Prejudgment Interest Simply Followed Long Standing Precedent that Courts Do Not Grant Prejudgment Interest on Punitive Damages.

The Court of Appeals agreed with Garda that the trial court erred when it awarded both double damages and prejudgment interest because both compensate the Drivers for harm due to a delayed payment. *Hill*, 198 Wn. App. at 364. The Drivers urge that this holding must be heard because it is a matter of “substantial public interest.” Answer at 19. Yet their entire argument is yet again simply a desire for a different outcome, not that there is specific contrary precedent. While they cite *Stevens v. Brink's Home Sec., Inc.*, 162 Wn. 2d 42, 50 (2007), that case simply discusses that an award of prejudgment interest was appropriately awarded for liquidated back pay claims; it did not discuss the appropriateness of an award of both double damages and prejudgment interest at issue here.

Seeming to acknowledge the absence of direct case law on point, the Drivers discount *Ventoza v. Anderson*, 14 Wn.App. 882 (1976) to rely on an unpublished decision from the Western District of Washington. Answer at 19-20. While not a wage claim, *Ventoza* held that “an award of prejudgment interest is inappropriate when the court awards double damages.” *Hill*, 198 Wn. App. at 365. The Court of Appeals simply clarifies that this same principle equally applies when a court awards double damages under RCW 49.52.050 and RCW 49.52.070. This

decision carries with it no substantial impact on the public interest; employees may still recover double damages for willful wage withholding, which compensate them for the delay in payment and also “punish and deter [the employer’s] blameworthy conduct.” *Morgan v. Kingen*, 141 Wn.App. 143, 161-62 (2007). Employees who fail to demonstrate willfulness but still recover unpaid wages will receive prejudgment interest to compensate them for the delay in payment. The state’s interest in seeing that its citizens are paid properly, and deterring willful misconduct, are met, and this Court’s review of this issue is not warranted.

### III. CONCLUSION

Garda asks that this Court accept review of the Court of Appeals’ decision, *Hill v. Garda CL Nw., Inc.*, 198 Wn. App. 326 (2017), but for the reasons and issues it set out in its opening brief. The Drivers have not raised issues of substantial public interest warranting review by this Court.

Respectfully submitted this 28<sup>th</sup> day of July, 2017

~~FISHER & PHILLIPS LLP~~

By: 

Catharine Morisset, WSBA # 29682

Clarence Belnavis, WSBA # 36681

Attorneys for Petitioner Garda CL  
Northwest, Inc.



## Appendix

<b>CBA</b>	<b>Meal Period Waiver</b>	<b>Employee's Right To Revoke Waiver</b>	<b>Date Signed</b>
2004-2009 Mt Vernon Labor Agreement CP 383-402	"[R]outes will be scheduled without a designated lunch break[.]" CP 390.	"In the event a truck crew. . .wishes to schedule a non-paid lunch break, they must notify their supervisor."	6/1/04
2009-2012 Mt. Vernon Labor Agreement CP 405-422	"Employees hereto agree to an on-duty meal period." CP 413.	"Employees may have an off duty meal period if they make arrangements with their supervisor...or provide[] their supervisors with a written request to renounce the on-duty meal period[.]" <i>Id.</i>	3/31/09
2013-2016 Mount Vernon Agreement CP 1128 - 1152	"The Employees hereto agree to an on-duty meal period." CP 1140.	"Employees may have an off duty meal period if they make arrangements with their supervisor...or provide[] their supervisors with a written request to renounce the on-duty meal period[.]" <i>Id.</i>	9/10/13
2006-2009 Pasco Labor Agreement CP 426-444	"[R]outes will be scheduled without a designated lunch break[.]" CP 433.	"In the event a truck crew on a Street or ATM route wishes to schedule a non-paid lunch break, they must notify their supervisor." <i>Id.</i>	8/ xx/06 (date illegible)
2010-2013 Pasco Labor Agreement CP 1154	"The Employees hereto waive any meal period(s) to which they would be otherwise entitled [.]" CP 1162.	"Employees may take an unpaid off-duty meal period if they make arrangements with their supervisor. . .or provide[] their supervisor with a written request to renounce the on-duty meal period [.]" <i>Id.</i>	5/1/10

2004-2008 Seattle Labor Agreement CP 447-465	"[R]outes will be scheduled without a designated lunch break." CP 454.	"In the event a truck crew. . .wishes to schedule a non-paid lunch break, they must notify their supervisor."	4/1/04
2008-2011 Seattle Labor Agreement CP 470-487	"The Employees hereto agree to an on-duty meal period." CP 478.	"Employees may have an off duty meal period if they make arrangements with their supervisor in advance . . . or provide[] the supervisor with a written request to renounce the on-duty meal period[.]"	9/29/08
2007 Spokane Rules CP 491-	"[R]outes will be scheduled without a designated lunch break." CP 497.	"In the event a truck crew. . .wishes to schedule a non-paid lunch break, they must notify their supervisor."	7/07
2008-2011 Spokane Labor Agreement CP 508-525	"The Employees hereto agree to an on-duty meal period." CP 516.	"Employees may have an off duty meal period if they make arrangements with their supervisors in advance . . . or provide[] the supervisor with a written request to renounce the on-duty meal period [.]"	6/1/08
2005-2008 Tacoma Labor Agreement CP 529-47	"[R]outes will be scheduled without a designated lunch break." CP 536.	"In the event a truck crew. . .wishes to schedule a non-paid lunch break, they must notify their supervisor."	5/1/05

2009-2012 Tacoma Labor Agreement CP 550-67	"The Employees hereto agree to an on-duty meal period." <i>Id.</i> at 8, CP 558.	"Employees may have an off duty meal period if they make arrangements with their supervisors in advance . . . or provide[] the supervisor with a written request to renounce the on-duty meal period [.]"	11/19/08
2009 Wenatchee Labor Agreement CP 571-89	"[R]outes will be scheduled without a designated lunch break." CP 578.	"In the event a truck crew. . . wishes to schedule a non-paid lunch break, they must notify their supervisor."	9/1/06
2010 Wenatchee Labor Agreement CP 591-612	"The Employees hereto waive any meal period(s) to which they would otherwise be entitled." CP 601.	"Employees may take an unpaid off-duty meal period in exchange for an on-duty meal period.	4/20/10
2006-2009 Yakima Labor Agreement CP 615	"[R]outes will be scheduled without a designated lunch break." CP 622.	"In the event a truck crew. . . wishes to schedule a non-paid lunch break, they must notify their supervisor."	10/19/06
2010-2013 Yakima Labor Agreement CP 636-57	"The Employees hereto waive any meal period(s) to which they would otherwise be entitled." CP 646.	"Employees may take an unpaid off-duty meal period in exchange for an on-duty meal period."	5/1/01

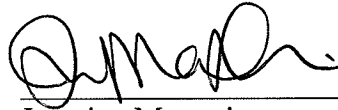
CERTIFICATE OF SERVICE

I hereby certify that on this date, I emailed and mailed the foregoing on:

Daniel F. Johnson  
Breskin Johnson & Townsend PLLC  
1000 Second Avenue Suite 3670  
Seattle, WA 98104  
Tel. (206) 652-8660  
Fax (206) 652-8290  
[djohnson@bjtlegal.com](mailto:djohnson@bjtlegal.com)  
Attorney for Garda/Petitioner

Adam Berger  
Martin Garfinkel  
Schroeter Goldmark & Bender  
810 Third Avenue, Suite 500  
Seattle, WA 98104  
Tel. (206) 622-8000  
Fax (206) 682-2305  
[berger@sgb-law.com](mailto:berger@sgb-law.com)  
[garfinkel@sgb-law.com](mailto:garfinkel@sgb-law.com)  
Attorneys for Hill et al.

DATED this 28<sup>th</sup> day of July 2017.



Jazmine Matautia

**FISHER & PHILLIPS (SEATTLE)**

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- melson@skellengerbender.com

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Sender Name: Jazmine Matautia - Email: jmatautia@fisherphillips.com

**Filing on Behalf of:** Catharine M Morisset - Email: cmorisset@fisherphillips.com (Alternate Email: jmatautia@fisherphillips.com)

Address:  
1201 Third Ave  
Suite 2750  
Seattle, WA, 98101  
Phone: (206) 693-5084

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